



## Filing Receipt

**Received - 2022-01-04 11:32:36 AM**  
**Control Number - 51841**  
**ItemNumber - 18**

**PROJECT NO. 51841**

**REVIEW OF 16 TAC § 25.53                    §     PUBLIC UTILITY COMMISSION  
RELATING TO ELECTRIC SERVICE           §  
EMERGENCY OPERATIONS PLANS           §                    OF TEXAS**

**JOINT INITIAL COMMENTS OF THE AEP COMPANIES  
ON THE PROPOSAL FOR PUBLICATION OF REPEAL OF 16 TAC § 25.53 AND  
REPLACEMENT WITH PROPOSED NEW 16 TAC § 25.53**

I.	Overall Comments .....	2
II.	Comments on Specific Subsections .....	5
A.	Application – Proposed 16 TAC § 25.53(a) .....	5
B.	Definitions – Proposed 16 TAC § 25.53(b) .....	5
	§ 25.53(b)(3) – Definition of Emergency .....	5
C.	Filing Requirements – Proposed 16 TAC § 25.53(c) .....	5
	§ 25.53(c)(1) – Initial EOP Filing Date .....	5
	§ 25.53(c)(1) – Annual Filing Requirement .....	6
	§ 25.53(c)(1)(A) – Unredacted Filing Requirement .....	6
	§ 25.53(c)(1)(C) – After-action Report .....	8
	§ 25.53(c)(2) .....	9
	§ 25.53(c)(4)(A) – Determination of Insufficient Information .....	9
	§ 25.53(c)(4)(B) – Updated Filing in Response to Commission Staff Feedback .....	10
D.	Information to be included in the EOP - Proposed 16 TAC § 25.53(d) .....	10
	§ 25.53(d) – Use of the Term “Outline” .....	10
	§ 25.53(d)(2) – Record of EOP Distribution .....	11
	§ 25.53(d)(4) – Affidavit .....	11
	§ 25.53(d)(5)(A) and (B) – Communication Plan .....	12
E.	Annexes to be included in the EOP - Proposed 16 TAC § 25.53(e) .....	13
	§ 25.53(e)(1)(C)(iii) – Registry of Critical Load Customers .....	13
	§ 25.53(e)(1)(G)-(H) & (e)(2)(G)-(H) – Cyber Security and Physical Security Incident Annexes .....	13
	§ 25.53(e)(2) – Address PURA § 39.918 Generation Facilities .....	14
F.	Drills – Proposed 16 TAC § 25.53(f) .....	15
G.	Reporting Requirements – Proposed 16 TAC § 25.53(g) .....	15
III.	Conclusion .....	15
IV.	Executive Summary of the AEP Companies’ Initial Comments .....	16

**PROJECT NO. 51841**

<b>REVIEW OF 16 TAC § 25.53</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>RELATING TO ELECTRIC SERVICE</b>	<b>§</b>	
<b>EMERGENCY OPERATIONS PLANS</b>	<b>§</b>	<b>OF TEXAS</b>

**JOINT INITIAL COMMENTS OF THE AEP COMPANIES  
ON THE PROPOSAL FOR PUBLICATION OF REPEAL OF 16 TAC § 25.53 AND  
REPLACEMENT WITH PROPOSED NEW 16 TAC § 25.53**

AEP Texas Inc., Electric Transmission Texas, LLC (“ETT”), and Southwestern Electric Power Company (“SWEPCO”) (collectively, the “AEP Companies”) timely submit these joint Initial Comments on the proposed repeal of 16 Texas Administrative Code (“TAC”) § 25.53 relating to Electric Service Emergency Operations Plans and proposed new 16 TAC § 25.53 relating to Electric Service Emergency Operations Plans. The AEP Companies sincerely appreciate the work of the Public Utility Commission of Texas (“Commission”) and the Staff of the Commission (“Commission Staff”) on this important matter and appreciate the opportunity to comment. As directed in the proposal for publication, a standalone executive summary is provided at the end of this filing.

**I. Overall Comments**

New 16 TAC § 25.53 will implement § 24 of Senate Bill 3 from the 87<sup>th</sup> Regular Session of the Texas Legislature, which amended Public Utility Regulatory Act (“PURA”)<sup>1</sup> § 186.007 relating to Public Utility Commission Weather Emergency Preparedness Reports. As proposed, new 16 TAC § 25.53 will require electric utilities to file an emergency operations plan (“EOP”) in its entirety with the Commission and outlines the required contents of an EOP.

The proposed rule appears to envision an entity submitting a singular, comprehensive “Emergency Operations Plan” to the Commission for the entirety of its functions and operations. Subpart (b)(4) defines emergency operations plans as “*the* plan and attached annexes maintained on a continuous basis by an entity...” [Emphasis added.] Subpart (d)(4)(B) describes a discrete

---

<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001 – 66.016 (West).

group of executives reviewing and approving “the EOP.” Subsection (e) describes annexes that are “to be included in *the* emergency operations plan.” [Emphasis added.]

The proposal for a singular, comprehensive EOP, however, does not accurately reflect how utilities’ EOPs are structured. The AEP Companies do not have one “EOP” applicable to all areas of the organization. Nor is there a specific, distinct “annex” for each requirement described in subsection (e). Rather, the term “EOP” could more accurately be described as an umbrella under which a number of plans or procedures are dispersed throughout the organization, often for specific functions or purposes. Examples include a NERC-compliant transmission EOP, function-specific business continuity plans, load shed plans, and a corporate emergency response plan.

Currently, under the same statute that is being cited to revise this rule, entities submit comprehensive summaries of their EOPs to the Commission. That approach is sensible in that it enables an entity to bring together multiple plans and procedures into one document for the Commission. Rather than trying to fit a square peg into a round hole, the AEP Companies recommend the Commission require entities to update and resubmit their existing summaries for any new requirements added during this rulemaking. This would alleviate the inherent conflict between the proposed rule and the reality of entities’ emergency operations preparation and practices. And given that the Commission is subject to the broad disclosure requirements of the Texas Public Information Act, submitting a comprehensive summary would also eliminate concerns (discussed in Section II) about publicly disclosing critical energy infrastructure information and other highly sensitive, confidential information.

Although less desirable due to the potential public disclosure of information pertaining to critical infrastructure, customers, and other sensitive areas, entities might, in the alternative, submit their various EOPs that are required under the rule instead of creating a new, singular “EOP.” Utilities’ emergency processes and organizational structures have evolved organically over time in a manner that has contemporaneously been documented within our various EOPs. It would be more meaningful for the Commission to review information that accurately reflects how a utility responds to emergencies (and what its personnel train to), than to review a document created purely in response to regulatory rule language. Doing so would offer the Commission a sufficient and realistic means by which to assess an entity’s emergency preparedness.

This is true, too, for the signoffs and distributions in proposed subsection (d). It would be better for an entity to describe to the Commission how it disseminates its various EOPs through

the organization, than to create and distribute a document that parallels existing materials relied upon by personnel to prepare for and operate during an emergency.

Creating multiple versions of EOPs to satisfy overlapping regulations could introduce risk of confusion among employees about what plan governs their area of the business during an emergency. For example, because transmission voltages are already heavily regulated by both the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation (“NERC”), the proposed rule changes could result in duplication and/or conflicting regulations between the Commission and NERC over emergency operating plans. Examples would include different definitions for similar terms like “Emergency” and “Operating Plans” and differing comment periods on the same emergency plans for both the Commission and the Electric Reliability Council of Texas (“ERCOT”). Similar issues could arise for a multi-jurisdictional utility such as SWEPCO. Should a multi-jurisdictional utility disregard its system-wide EOPs in favor of a document that is particular to one portion of its service area? Parallel plans also introduce the risk of differences arising between what is documented in an entity’s functional EOPs, and the EOP required under the proposed rule. Continuing to submit a comprehensive summary on the various EOPs rather than creating additional EOP documentation to specifically satisfy this new rule would alleviate these concerns. If the Commission declines to continue permitting the submission of a comprehensive EOP summary, the AEP Companies request that the Commission exclude from its rule the subset of documents, plans, or other submittals a utility is required to make to an RTO or Regional Entity in compliance with NERC reliability and Critical Infrastructure Protection standards, or with applicable RTO rules and requirements.

Utilities recognize and comply with regulation and are always mindful of our obligation to serve and to provide reliable service. There should be a balance between prescribing necessary standards, and retaining flexibility to develop and execute processes and procedures that best enable utilities to operate under normal conditions and to execute decisively and effectively during an emergency. Utilities constantly prepare for emergency situations and successfully respond to them with regularity. The AEP Companies recommend that the proposed rule allow more flexibility for utilities to demonstrate how we do so, in a manner consistent with our existing practices and in a way that provides additional protection for the confidentiality of sensitive information.

## II. Comments on Specific Subsections

### A. Application – Proposed 16 TAC § 25.53(a)

The AEP Companies have no comments on this proposed subsection.

### B. Definitions – Proposed 16 TAC § 25.53(b)

#### *§ 25.53(b)(3) – Definition of Emergency*

This subpart proposes a definition for the term “emergency.” The proposed definition is too broad. As proposed, an emergency is “any incident resulting from an imminent hazard or threat that endangers life or property or presents credible risk to the continuity of electric service.” The second sentence notes that the term “emergency” includes emergencies declared by various entities (e.g., governments, ERCOT, Reliability Coordinator), but it is not clear that the term emergency is limited to times when those entities declare an emergency. Therefore, as drafted, the rule could be interpreted to require activation of an EOP if continuity of electric service is threatened for a single customer or customers on a single feeder, even though resolving such outages is part of a utility’s normal, non-emergency operations. To narrow the definition to more closely align with when a utility should activate its EOP, the AEP Companies suggest clarifying the proposed definition as follows:

(3) Emergency – Any incident resulting from an imminent hazard or threat that endangers life or property or presents credible risk to the continuity of electric service. ~~The term includes~~ that results in an emergency declared declaration by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity.

### C. Filing Requirements – Proposed 16 TAC § 25.53(c)

#### *§ 25.53(c)(1) – Initial EOP Filing Date*

This subpart proposes that an entity must file an EOP by April 1, 2022. However, it is unclear when this rulemaking will conclude and whether the proposed EOP requirements will change. Based on the proposed requirements, preparing an EOP to conform to the final adopted structure and format will require significant time. Because of this uncertainty, the AEP Companies propose that an updated EOP be filed 90 days after a proposed rule has been adopted.

### ***§ 25.53(c)(1) – Annual Filing Requirement***

Subpart (c)(1) requires an entity, beginning in 2023, to annually file an EOP no later than February 15. If the Commission concludes that an annual filing should be required, the AEP Companies propose that the timing of the annual filing be changed from February 15<sup>th</sup> to a date in mid-Fall, which will allow time to incorporate changes for the winter months and will not conflict with the numerous reports and other filings utilities are required to submit in mid-Spring.

The AEP Companies recognize the importance of the on-going assessment of emergency operations. With this in mind, the AEP Companies respectfully suggest that the proposed annual filing requirement is unnecessary in light of two other proposed requirements that will ensure the Commission is kept up-to-date on an entity's EOP, and that it thus be removed from the rule. Proposed 16 TAC § 25.53(c)(4)(C) requires an entity to file an updated EOP when a significant change to the EOP is made. An annual EOP filing in addition to filing updated EOPs when significant changes are made will create additional work and filings with little, if any, corresponding benefit. As noted in the Overall Comments above, the individual AEP Companies do not have one EOP that is applicable to all areas of each respective company. If utilities were to file a summary of their EOPs, it may be reasonable to do so annually. But gathering and redacting the various plans and procedures dispersed throughout the organization in their entirety for filing at the Commission each year would be onerous and would not provide any information additional to what the Commission would already learn from an entity's EOP filing when a significant change is made.

In addition to (c)(4)(C) filings, entities would annually file an after-action report that includes lessons learned and an outline of changes the entity made to the relevant sections of its EOP, as described in the comments regarding subpart (c)(1)(C) below.

### ***§ 25.53(c)(1)(A) – Unredacted Filing Requirement***

The AEP Companies are concerned with the proposed requirement to file with the Commission an unredacted EOP in its entirety. In particular, the AEP Companies are concerned that requests made through the Texas Public Information Act ("TPIA"), which must "be liberally construed in favor of granting a request for information,"<sup>2</sup> may negate the confidentiality of these

---

<sup>2</sup> Tex. Gov't Code § 552.001 (West).

plans, which are considered ERCOT Critical Energy Infrastructure Information (“ECEII”). In addition, certain portions of the EOPs are considered CEII under federal rules. Each TPIA request creates the risk that this critical information could be publicly disclosed. And each TPIA request that encompasses an EOP would require defending the confidentiality of an EOP on a short timeline. During the last rulemaking when this rule was repealed and replaced in Project No. 34202, several entities expressed concerns about this same issue, and the Commission adopted a rule that permitted the filing of a comprehensive summary and averred that the Commission did not expect a market entity to submit confidential information in its comprehensive summary.<sup>3</sup>

PURA § 186.007(f) seems to recognize the risk the TPIA request creates with respect to EOPs because it explicitly requires an entity within the ERCOT power region to provide its EOP to ERCOT “in its entirety,” but does not include similar language with respect to EOP filings with the Commission. Unlike the Commission, ERCOT is not subject to the broad disclosure requirements of the TPIA.<sup>4</sup> Instead, public access to information held by ERCOT is governed by 16 TAC § 25.362(e). Under 16 TAC § 25.362(e), information submitted to ERCOT is protected from public disclosure if it is designated as Protected Information under ERCOT rules. Under ERCOT’s protocols, the EOPs of ERCOT, Transmission and/or Distribution Service Providers, and Resources are ECEII, which is considered Protected Information and thus not subject to public disclosure.

In addition to CEII, many other details of emergency operations should be maintained as confidential, including, for example, specific details related to load shedding plans such as the registry of critical load customers. The AEP Companies agree that it is important to maintain a registry of critical load customers, as is proposed in § 25.53(e)(1)(C)(iii), but the risk that this information could be disclosed to the public should be minimized. In Project No. 34202, the Commission agreed with entities that argued a list of critical load customers should not be filed with the Commission. The Commission stated that it was primarily concerned with the process for registering and contacting critical load customers and determined that it would not add a

---

<sup>3</sup> Project No. 34202, Order Adopting the Repeal of § 25.53 and New § 25.53 as Approved at the December 19, 2007, Open Meeting at 7 (Jan. 4, 2008).

<sup>4</sup> Tex. Att’y Gen. OR2021-13253.



requirement to the rule that utilities must file a list of critical load customers with the Commission.<sup>5</sup> Thus, the existing 16 TAC § 25.53(c)(1)(A) requires a utility to include in its EOP a registry of critical load customers, but does not go as far as requiring the utility to file the registry with the Commission. Continuing to permit the filing of a comprehensive summary would alleviate this concern with the rule as proposed and would allow a utility to describe how it maintains the critical load registry, the location of the registry, how the utility communicates with the critical load during emergency events, and the process for training utility staff with respect to serving critical load customer.

The AEP Companies further note that a public version of an EOP could require so many redactions that it could be less useful to the Commission than providing a comprehensive summary.

For these reasons, the AEP Companies respectfully urge the Commission to remove the requirement to file an unredacted EOP in its entirety with the Commission and instead retain the option to file a comprehensive summary of the EOP. So that the Commission may review the unredacted version of an entity's EOP, the AEP Companies suggest modifying this subsection of the rule so that entities "must maintain a current EOP in its entirety... available for review by the commission or the commission's designee," which is the language the proposed rule uses in proposed 16 TAC § 25.53(c)(5) with respect to ERCOT's EOP. Alternatively, the rule could retain similar language to the language found in existing 16 TAC § 25.53(g): "A[n] entity shall make available a complete copy of its emergency operations plan at its main office for inspection by the commission staff upon request."

#### ***§ 25.53(c)(1)(C) – After-action Report***

The AEP Companies recognize the importance of assessing our policies and procedures on a continual basis. Documents that underlie our operations are therefore living documents, to be updated as circumstances warrant. However, because the AEP Companies suggest removing the requirement to file an EOP annually, the AEP Companies suggest that subsection (c)(1)(C) be deleted and the after-action report described in this section be moved to a new subsection.

---

<sup>5</sup> Project No. 34202, Order Adopting the Repeal of § 25.53 and New § 25.53 as Approved at the December 19, 2007, Open Meeting at 9.

In addition, the AEP Companies suggest slightly narrowing the circumstances requiring an after-action report. Under current practices, the AEP Companies sometimes activate their respective EOPs in response to a weather event that is not unusual or extreme, and does not result in a governmental entity declaring an emergency, but still causes widespread outages. Thus, the EOP activation facilitates storm restoration as it is intended to do, but does not necessarily raise novel issues warranting a review and report of the event. Therefore, the AEP Companies suggest that an after-action report be required only when an incident results in an emergency declaration by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity instead of every time the EOP is activated.

Beginning in 2023, ~~the annual EOP must include~~, an entity must file, for each incident in the prior calendar year that required an entity to activate its EOP in response to an emergency declaration by local, state, or federal government; ERCOT; or a Reliability Coordinator, a summary after-action report that includes lessons learned and an outline of changes the entity made to the EOP as a result.

#### **§ 25.53(c)(2)**

In the proposal for publication, there is no subsection (c)(2), so the subparts in subsection (c) should be renumbered.

#### **§ 25.53(c)(4)(A) – Determination of Insufficient Information**

This subsection requires an entity to “file an updated EOP if commission staff determines that the entity’s EOP on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency.” PURA § 186.007(b) requires the Commission, not Commission Staff, to find that an EOP does not contain adequate information. Accordingly, the proposed rule should not delegate to Commission Staff sole discretion in making such a determination. Instead, the AEP Companies suggest inserting the word “reasonably” into the provision as follows, which would allow Commission Staff to review and make determinations, and would allow the option to have the Commission make a final determination if the parties cannot reach agreement:

- (A) An entity must file an updated EOP if commission staff reasonably determines that the entity’s EOP on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency.

***§ 25.53(c)(4)(B) – Updated Filing in Response to Commission Staff Feedback***

This proposed subsection would require an entity to “file an updated EOP in response to feedback provided from commission staff.” Having no limitation on the type or timing of feedback is too broad. Such feedback could end up requiring an entity to file multiple updates of its EOP in a single year, it could allow Commission Staff to propose significant operational changes without challenge, and it could open the door to utilities receiving feedback from Commission Staff on its EOP that may conflict with other requirements or feedback that utilities receive from entities such as NERC and/or an entity’s RTO. For example, transmission, generation, cyber security, and physical security incidents are highly regulated by NERC already. Staff’s feedback could impact the procedures that the AEP Companies have set up to comply with NERC requirements. Therefore being required to update or change the annexes required by the proposed rule in response to feedback from Commission Staff could be problematic. Under proposed § 25.53(c)(4)(A) Commission Staff may already require a utility to update its EOP for insufficient information, which is the type of feedback contemplated by PURA § 186.007. Going beyond that is unnecessary and potentially problematic. For these reasons, the AEP Companies respectfully suggest this subpart be removed from the rule. However, as noted in the prior subsection of these comments, the AEP Companies would supplement or update its filings if Staff reasonably found that the EOP on file does not contain adequate information to determine whether the entity can provide adequate electric services.

**D. Information to be included in the EOP - Proposed 16 TAC § 25.53(d)**

***§ 25.53(d) – Use of the Term “Outline”***

Subsection (d) requires an entity’s EOP to include annexes that “outline” the entity’s response to the types of emergencies specified in subsection (e). Other parts of the rule require that an entity file an EOP in its “entirety.” Typically, an outline would list or describe only the most important parts of a plan, and would not list all the details that make up the entire plan. It is therefore unclear (i) whether the proposed rule contemplates that the “entirety” of the EOP would be composed of the requirements of subsection (d) plus annexes that outline more detailed plans; or (ii) whether a different word should replace the term “outline” in the proposed rule. Because of the confidentiality concerns discussed in these comments, the AEP Companies support the former

interpretation if an entity's EOP must be filed with the Commission in its entirety. In any case, the AEP Companies suggest that the rule be clarified to address this ambiguity.

#### ***§ 25.53(d)(2) – Record of EOP Distribution***

This proposed subpart would require an entity to provide a record of distribution that includes the titles and names of persons in the organization receiving the EOP and the dates of distribution. There are three issues with this requirement. First, such a list could include many names, particularly because certain personnel receive only certain pieces of the EOP relevant to their domain, and various distribution dates. In addition, as people enter and exit the Company, the list will likely need frequent updating. Second, it is unclear whether the confidentiality of the listed names could be maintained. Third, the affidavit required under the proposed rule already requires an attestation that all relevant operating personnel of the electric utility are familiar with the contents of the EOP, and such personnel are committed to following the plan except to the extent deviations are appropriate under the circumstances during the course of an emergency. As an alternative, the AEP Companies suggest that the rule instead require a description of how the EOP is distributed to ensure that everyone who needs it has it.

#### ***§ 25.53(d)(4) – Affidavit***

This proposed subpart would require an affidavit from the entity's highest-ranking representative, official, or officer with binding authority over the entity. The AEP Companies do not oppose the notion of an affidavit. Indeed, when an entity submits a filing under the current version of 16 TAC § 25.53, it includes an affidavit from a company officer attesting to, among other things, relevant personnel's familiarity with the plan.

The AEP Companies recommend the Commission adopt an affidavit requirement more in line with what currently exists. The proposed rule is unnecessarily detailed in its affidavit requirements. For example, subpart (d)(4)(E) requires a business continuity plan specifically for returning to normal operations, even though it is reasonable for an entity to embed such procedures within its functions' emergency operating plans, such as the dispatch operators' load shed plan, rather than in some new document. Similarly, subpart (d)(4)(B) describes an entity's EOP as if it is one, single document for the entirety of the organization, to be circulated among all executives, even though in practice distinct EOPs exist for distinct functions within an organization. For

example, a power plant's personnel do not perform their duties according to the transmission function's emergency procedures. It would be more appropriate, and still a sufficient means by which to attest to the entity's EOPs, if the Commission were to maintain affidavit language that matches what currently exists in the rule while retaining the proposed "binding authority" language. The AEP Companies offer the following recommendation:

(d)(4) An affidavit from the entity's highest-ranking representative, official, or officer with binding authority over the entity, affirming the following:

(A) That all relevant operating personnel of the electric utility are familiar with the contents of the emergency operations plan, and such personnel are committed to following the plan except to the extent deviations are appropriate under the circumstances during the course of an emergency.

(B) The entity's emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received Federal Emergency Management Agency (FEMA) National Incident Management System (NIMS) training, specifically IS-700.a, IS-800.b, IS-100.b, and IS-200.b.

#### ***§ 25.53(d)(5)(A) and (B) – Communication Plan***

The AEP Companies suggest clarifying that subparts (A) and (B) apply only during an emergency:

The language for proposed § 25.53(d)(5)(A) should be clarified as follows:

An entity with transmission and distribution service operations must describe the procedures during an emergency for handling complaints and for communicating with the public;....

The language for proposed § 25.53(d)(5)(B) should be clarified as follows:

An entity with generation operations must describe the procedures during an emergency for communicating with the public;....

**E. Annexes to be included in the EOP - Proposed 16 TAC § 25.53(e)**

***§ 25.53(e)(1)(C)(iii) – Registry of Critical Load Customers***

The AEP Companies are concerned with filing an unredacted version of the registry of critical load customers with the Commission for the reasons discussed in the comments to the proposed requirement to file an unredacted version of an EOP with the Commission.

***§ 25.53(e)(1)(G)-(H) & (e)(2)(G)-(H) – Cyber Security and Physical Security Incident Annexes***

These proposed subparts would require entities to provide cyber security and physical security incident annexes. The AEP Companies recommend these requirements be removed from the proposed rule because they are closely monitored already by the Commission and NERC. Cyber security in particular is inappropriate for inclusion in this rule due to an already existing Commission rule and to utilities' compliance with NERC Critical Infrastructure Protection (CIP) standards.

The Commission created 16 TAC § 25.367, *Cybersecurity Monitor*, to establish cyber security coordination and monitoring programs overseen by a Commission-employed cyber security monitor. The AEP Companies have been active participants in the monitor's programs, which have included surveys, self-assessments, and on-going dialogue with other industry participants to share information about emerging threats, best business practices, training opportunities, and related topics. The monitor is expressly authorized to gather and analyze information to perform its cyber security monitoring function. It reports to the Commission monthly, quarterly, and annually on utility cybersecurity preparedness, and produces special reports when directed by the Commission. The monitor regularly communicates with the Commission to prioritize its efforts and to immediately report any concerns that may pose a threat to continuous and adequate electric service or to public safety.

In addition to the Commission's cyber security rule and on-going monitoring, utilities also must comply with NERC CIP standards. The CIP standards enhance electric infrastructure security through the protection of physical and cyber assets. They include a standard for incident planning and response, and address a wide variety of threats including internal vulnerabilities, sabotage, and terrorism. NERC enforces CIP standards, which are mandatory, with audits by the Regional Entities and administrative penalties.

Finally, cyber security and physical security incident information is by its very nature exceedingly sensitive. Filing it at the Commission would create significant risk of critical protective measures being disclosed publicly, rendering it less effective or ineffective. The sharing of sensitive information was discussed in detail earlier within this document, and it is of vital concern when it pertains to security matters.

Due to regulation and monitoring by multiple other existing means and the sensitivity of the subject matter, AEP Companies recommend § 25.53(e)(1)(G) and (H) be removed from the proposed rule. The AEP Companies likewise recommend § 25.53(e)(2)(G) and (H) be removed.

***§ 25.53(e)(2) – Address PURA § 39.918 Generation Facilities***

This subsection requires an electric utility to include specified annexes for generation resources that it operates. Because a transmission and distribution utility (“TDU”) is also an “electric utility,” proposed § 25.53(e)(2) could be interpreted to apply to PURA § 39.918 generation facilities. PURA § 39.918 allows a TDU to “lease and operate” facilities that provide temporary emergency electric energy to aid in restoring power to the utility’s distribution customers during a widespread power outage. As drafted, the proposed rule does not appear to address the emergency generation facilities authorized under PURA § 39.918 in two key ways.

First, failing to exclude these types of facilities from ordinary “generation resources,” would require TDUs to provide numerous annexes that would make little sense given that the nature of the generation facilities is for emergency power restoration, which are authorized to be used only in cases when widespread outages are already occurring. Accordingly, the AEP Companies suggest modifying proposed § 25.53(e)(2) as follows:

An electric cooperative, an electric utility, or a municipally owned utility that operate a generation resource in Texas; and a PGC must include the following annexes for its generation resources other than generation resources authorized under PURA § 39.918:

Second, PURA § 39.918(g) requires a TDU that leases and operates facilities under PURA § 39.918(b)(1) or that procures, owns, and operates facilities under PURA § 39.918(b)(2) to include in the utility’s EOP a detailed plan on the utility’s use of those facilities. However, the proposed rule does not appear to address this statutory requirement.

**F. Drills – Proposed 16 TAC § 25.53(f)**

The AEP Companies have no comments on this proposed subsection.

**G. Reporting Requirements – Proposed 16 TAC § 25.53(g)**

The AEP Companies have no comments on this proposed subsection.

**III. Conclusion**

The AEP Companies appreciate the opportunity to provide comments on the Proposal for Publication and the Commission's consideration of the comments set forth herein. An executive summary of the comments is provided at the end of this filing.

Respectfully submitted,

/s/ Leila Melhem

Leila Melhem  
State Bar No. 24083492  
AMERICAN ELECTRIC POWER SERVICE  
CORPORATION  
400 West 15th Street, Suite 1520  
Austin, Texas 78701  
Telephone: (512) 481-3321  
Facsimile: (512) 481-4591  
Email: [lmelhem@aep.com](mailto:lmelhem@aep.com)

ON BEHALF OF AEP TEXAS INC.;  
ELECTRIC TRANSMISSION TEXAS, LLC;  
AND SOUTHWESTERN ELECTRIC  
POWER COMPANY



## PROJECT NO. 51841

<b>REVIEW OF 16 TAC § 25.53</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>RELATING TO ELECTRIC SERVICE</b>	<b>§</b>	
<b>EMERGENCY OPERATIONS PLANS</b>	<b>§</b>	<b>OF TEXAS</b>

### IV. Executive Summary of the AEP Companies' Initial Comments

The AEP Companies appreciate the effort of the Commission and Commission Staff in developing a revised rule addressing electric service emergency operations plans ("EOPs"). The proposed rule addresses many important topics and helps ensure that entities will routinely assess their EOPs and will regularly apprise the Commission of key updates. The AEP Companies constantly prepare for emergency situations and successfully respond to them with regularity. Based on this experience, the AEP Companies have two overarching concerns with the rule as proposed:

1. The AEP Companies are concerned that the proposed rule is prescriptive in a way that conflicts with existing EOP practices.
2. The AEP Companies are concerned that the proposed rule risks the confidentiality of the EOPs, which contain significant critical energy infrastructure information.

Those concerns are outlined in the Overall Comments section of this document and in several of the comments on specific subsections. The AEP Companies' comments on specific subsections are outlined below:

- 25.53(b)(3) – Limit the proposed definition of "emergency" to situations that credibly risk continuity of electric service that also result in an emergency declaration by a government, RTO, or reliability coordinator.
- 25.53(c)(1) – Because the timing and content of the proposed rule is uncertain, delay the required filing of an updated EOP until 90 days after the rule has been adopted.
- 25.53(c)(1) – In addition to filing an updated EOP each time a significant change is made, entities will also file annual after-action reports. These requirements make the costs of an annual EOP filing outweigh the benefits, warranting removal of the annual EOP filing requirement from the proposed rule.
- 25.53(c)(1)(A) – Retain the option for entities to file comprehensive summaries of their EOP. This would alleviate the confidentiality concerns associated with filing CEII and other highly sensitive information with the Commission, which is subject to the broad

disclosure requirements of the Texas Public Information Act. It would also address concerns that the rule's conflicts with existing EOP practices will lead to conflicting and confusing overlap of regulations and processes.

- 25.53(c)(1)(C) – The after-action reports should apply only to instances when an entity activates its EOP in response to an official emergency declaration.
- 25.53(c)(2) – Subsection (c)(2) was missing from the proposal, so subparts may need renumbering.
- 25.53(c)(4)(A) – Based on the language in PURA § 186.007, the rule should state that an entity must file an updated EOP if Commission Staff *reasonably* determines an entity's EOP is inadequate.
- 25.53(c)(4)(B) – The AEP Companies suggest removing this subpart, which is duplicative of (c)(4)(A) and provides no limits on the type or timing of feedback that Commission Staff could give to entities requiring them to update their EOPs.
- 25.53(d) – Clarify what it means to provide annexes that “outline” an entity's response to various types of emergencies.
- 25.53(d)(2) – Instead of requiring a detailed record of EOP distribution, require a description of how the EOP is distributed to ensure that everyone who needs it has it.
- 25.53(d)(4) – The proposed rule is unnecessarily detailed in its affidavit requirements, and some of the details conflict with existing EOP practices. The AEP Companies recommend the Commission adopt an affidavit requirement more in line with what currently exists.
- 25.53(d)(5)(A) and (B) – Clarify that the subparts require an entity to describe communication procedures only during an emergency.
- 25.53(e)(1)(C)(iii) – The AEP Companies are concerned with filing an unredacted version of the registry of critical load customers with the Commission because that information should be kept confidential, and the Commission is subject to the broad disclosure requirements of the Texas Public Information Act.
- 25.53(e)(1)(G)-(H) & (e)(2)(G)-(H) – Due to regulation and monitoring by multiple other existing means and the sensitivity of the subject matter, AEP Companies recommend § 25.53(e)(1)(G) and (H) be removed from the proposed rule. The AEP Companies likewise recommend § 25.53(e)(2)(G) and (H) be removed.
- 25.53(e)(2) – This proposed subpart should exclude generation facilities authorized under PURA § 39.918 because those are facilities intended to be used when widespread outages are already occurring. In addition, PURA § 39.918(g) requires a TDU to include in its EOP a detailed plan on the utility's use of PURA § 39.918 facilities. However, the proposed rule does not appear to address this requirement.